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A MASSACHUSETTS ACT MAKING THE RECORD OF INSTRUMENTS AFFECTING THE TITLE TO LAND CONCLUSIVE EVIDENCE OF DELIVERY. — One of the provisions in the Acts and Resolves of Massachusetts for 1892 is a long step in the right direction. The Act reads: "The record of a deed, lease, power of attorney, or other instrument duly acknowledged or proved in the manner provided by law, and purporting to affect the title to land, shall be conclusive evidence of the delivery of such instrument, in favor of purchasers for value without notice, claiming thereunder." It would seem in the line of reason and convenience for the Legislature to go further, leave out the restriction to purchasers for value, and so reverse the law as laid down in the leading Massachusetts case of *Maynard* v. *Maynard*, 10 Mass. 456. A man should be prevented from denying that a document which he has recorded is a deed, even where it is a pure gift, as in *Maynard* v. *Maynard*. If it is a mere private memorandum, it has no business on the public records. Still, much the most important thing is to protect innocent purchasers; and the new Massachusetts statute sets a good example to the other States, in most of which the registration of a deed is merely *prima facie* evidence, and the presumption may be rebutted even as against purchasers for value without notice.

BUILDERS' CONTRACTS WITH ARCHITECTS' CERTIFICATE; THE TRUE GROUND OF THEIR DECISION. — The rule so readily accepted by the Washington Supreme Court, *Craig et al.* v. *Geddis*, 30 Pac. Rep. 396, in regard to builders' contracts and the necessity of producing the architects' certificate required by the contract, had better be put on the true ground, — hardship. The defendant's promise to pay was conditioned expressly on a certificate being produced from the architect that the work had been done satisfactorily. The plaintiff attempts to recover without so producing. And the court ruled, in substance, that where there has been substantial compliance with all the terms of the contract, and nothing remains to be done which is practicable and reasonable to require, there is no need of producing the certificate.

Two well-settled rules of express conditions are, —

Express conditions must be performed, not alone in spirit, but in letter.

But prevention by the defendant of performance of the condition will excuse non-performance.

A descending scale of prevention of performance of this particular condition might be thus written: (1) prevention directly by the defendant, or indirectly by his collusion with the architect; (3) prevention by fraud on the part of the architect; and (3) prevention by the unwillingness or unreasonableness of the architect. But of these three, only (1) has the quality of prevention laid in the above rule; namely, prevention by the defendant. Authority and principle agree that (1) excuses non-performance; but on (2) and (3) they part company, (2) being the more conservative rule adopted in this country, *Chinn* v. *Schipper*, 51 N. J. Law, 1, and (3) the more general rule, *Nolan et al.* v. *Whitney*, 88 N. Y. 648; *Bentley* v. *Davidson*, 43 N. W. Rep. 139.

Often the proposition is confounded with the rule of implied conditions, that after part performance the breach must go to the essence. So in builders' contracts the question is put, as in the principal case: Has there been substantial compliance? But when this is done, the real nature of an express condition is lost sight of. An express condition is one mutually agreed by the parties to be binding; and when there is a contract already expressly made by the parties, the court must not find another in its stead.

After all is said, the facts remain that the condition is a very common one and a very hard one. Either the condition had to be changed by the builders, or its interpretation by the courts. And the change has been made by the courts rather than by the building fraternity.

THE LIABILITY OF MUNICIPAL CORPORATIONS AS CONSTRUCTIVE TRUSTEES. — The opinion of the Supreme Court of Pennsylvania in the Franklin Will Case (*In re Franklin's Estate*, 24 Atl. Rep. 626) is in more ways than one a disappointment. The subject is surely of importance to justify an opinion of average clearness and care; but the court succeeds in keeping two possible grounds for its decision vaguely shadowed forth so impartially that it is impossible to pick out either point as absolutely decided. To add to the flimsiness of their opinion, they refrain from quoting authorities on either point.

Benjamin Franklin left £1000 to the city of Philadelphia, to hold in trust, to lend at interest for one hundred years, at the end of which time part was to be appropriated to municipal objects, and the rest accumulated another century, to be divided finally between the city of Philadelphia and the State of Pennsylvania. The present appellant from the Orphans' Court, where the petition for an account was brought, claim that the trusts are void, and that they are entitled as representatives of the next of kin and the claimants under Franklin's residuary legatees.

The court grants for the present purpose that the trust for accumulation was illegal, and the bequest for that reason void. "It does not, however," they say, "necessarily follow that the fund was impressed, in the hands of the city, with a trust in favor of the residuary legatees or the legal representatives of the testator, or that the city, in virtue of its acceptance of it, became a trustee for the appellants, and, as such, liable